

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

In Re:

CHARLES R. HENSLEY,

Debtor.

DAVID R. HILLIER, Trustee in
Bankruptcy,

Plaintiff,

v.

CHARLES R. HENSLEY, LAWRENCE OWEN
RICE and wife, DORIS S. RICE,
and THOMAS E. RICE and wife,
VIRGINIA H. RICE,

Defendants.

Case No. A-B-89-10124
Chapter 7

Adversary Proceeding
No. 89-0209

FILED
U. S. BANKRUPTCY COURT
WESTERN DISTRICT OF NC

3-8-90

WARREN L. YADLOCK, CLERK
CY: FW
Deputy Clerk

ORDER UPHOLDING TRANSFER OF REAL PROPERTY

This matter came before the court on the complaint of the plaintiff Chapter 7 Trustee, to avoid an alleged fraudulent transfer of real property pursuant to 11 U.S.C. § 548. The court has concluded that the trustee should not be allowed to avoid the transfer because of the existence of a prior parol agreement which deprived the debtor's bankruptcy estate from obtaining any interest in the property.

Facts

In February 1982, Charles R. Hensley, the debtor in this proceeding, entered into an oral agreement with Esther Rice for the conveyance to him of certain real property. The debtor and Ms. Rice had the common intent that legal title was to be held by

the debtor solely for the purpose of using said title to secure a student loan for his daughter. A deed was recorded on February 18, 1982 evidencing the conveyance to the debtor, but the language of the deed did not reflect the underlying agreement between the parties.

Subsequent to the conveyance, the debtor did obtain the contemplated student loan, which currently has an outstanding balance. Apart from using the land as collateral for this loan, the debtor never exercised any other control over the subject property. In fact, Ms. Rice continued to live in the residence located on the property until her death, and during that time period she treated the property as her own, paying all taxes and making repairs to the residence.

Esther Rice died, leaving one heir, her son, Lawrence Owen Rice, who, with his wife Doris S. Rice, is a named defendant in this proceeding.

On February 13, 1989, the debtor conveyed the property to Lawrence Rice and his wife for the sum of one dollar. the deed evidencing this transfer, unlike the 1982 deed, recited the existence of the earlier agreement between the debtor and Esther Rice. Shortly thereafter, Lawrence and Doris Rice conveyed the property to Thomas E. Rice and his wife, Virginia H. Rice.

On March 2, 1989, less than one month after he transferred the property, the debtor filed a bankruptcy petition under Chapter 7. The debtor has admitted he was insolvent at the time of the conveyance.

Discussion

The trustee contends that the transfer of the property from the debtor to Lawrence and Doris Rice should be avoided as a fraudulent conveyance under 11 U.S.C. § 548(a)(2) which provides:

The trustee may avoid any transfer of an interest of the debtor in property...that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily -

* * *

received less than a reasonably equivalent value in exchange for such transfer or obligation; and was insolvent (emphasis added).

While on its face the transfer between the debtor and the Rices seems to meet all of the above requirements, in fact it does not.

Section 548 requires there to be "an interest of the debtor" in the property transferred. Under the facts as presented, the debtor had no such interest because of existence of the parol agreement with Esther Rice. Based on all of the evidence before the court, the parol agreement appears to be valid, and such validity precludes the debtor's bankruptcy estate from obtaining any interest in the property.

Accordingly, the court concludes that the transfer by the debtor to the Rices should not be avoided, and the parol agreement between the debtor and Esther Rice should be given effect.

It is therefore ORDERED that:

1. The parol agreement entered into by Charles R. Hensley and Esther Rice, which provided that Hensley held the subject real property in trust only for the purpose of obtaining a student loan for his daughter, is valid;

2. That the bankruptcy estate of Charles R. Hensley never acquired any interest in the subject property due to the existence of such parol agreement; and

3. That the conveyance from Charles R. Hensley to Lawrence O. Rice and Doris S. Rice vested all title to the property in the aforementioned grantees, thereby satisfying the earlier parol agreement in full.

This the 8th day of March, 1990.


George R. Hodges
United States Bankruptcy Judge